

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
7

8 MENSENIDES DAIRY, LLC, a
9 Washington limited liability company,
10 Plaintiff,
11 v.
12 AGRI-KING NUTRITION, INC., an
13 Illinois corporation,
14 Defendant.

15 No. 1:16-cv-03067-SAB

**ORDER DENYING
STIPULATED MOTION FOR
ENTRY OF STIPULATED
PROTECTIVE ORDER
REGARDING CONFIDENTIAL
INFORMATION**

16 Before the Court is the parties' Stipulated Motion for Entry of Stipulated
17 Protective Order Regarding Confidential Information, ECF No. 14. The parties
18 seek a protective order to protect trade secrets, commercial research, and other
19 confidential information. This motion was heard without oral argument.

20 The product of pretrial discovery is presumptively public, though Federal
21 Rule of Civil Procedure Rule 26(c) permits a district court to override this
22 presumption upon a showing of good cause. *San Jose Mercury News, Inc. v. U.S.*
23 *District Court—Northern Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999).
24 Rule 26(c) provides that a "court may, for good cause, issue an order to protect a
25 party or person from annoyance, embarrassment, oppression, or undue burden or
26 expense." Prior to the grant of a protective order, the moving party must certify it
27 has "conferred or attempted to confer with other affected parties in an effort to
28 resolve the dispute *without court action*." Fed. R. Civ. P. 26(c) (emphasis added).

1 Where the parties agree, as here, that certain information should remain
2 confidential, it may be prudent to enter into an agreement setting forth in writing
3 what information shall remain private. It is unnecessary, however, for such an
4 agreement to have this Court's imprimatur. A court issued protective order is less
5 necessary since Rule 5(d) was amended to only require filing discovery material
6 actually used in support of an action. Because not all discovery material need be
7 filed, most discovery material is not readily accessible to the public. Therefore, the
8 primary concern regarding confidential materials is how the parties themselves
9 handle such material. The Court will not hesitate to issue a protective order when
10 it is necessary; however, the moving party or parties must demonstrate good cause
11 exists and must bear the "burden of showing specific prejudice or harm" that
12 would result if no protective order is granted. *Phillips v. G.M. Corp.*, 307 F.3d
13 1206, 1210-11 (9th Cir. 2002). In other words, the moving party must demonstrate
14 why the parties cannot resolve the issue without court action—a standard that will
15 generally not be met when the parties agree to the terms of a proposed protective
16 order.

17 The motion at hand fails to demonstrate specific harm or prejudice that will
18 result if no protective order is granted. Additionally, the parties appear to be in
19 agreement on what material is appropriate for discovery and how it should be
20 handled. Accordingly, the Court **denies** the stipulated motion for protective order.

21 The proposed protective order also contained instructions for filing certain
22 materials under seal. A higher standard applies to sealing orders as they relate to
23 discovery materials in support of dispositive motions. In order for a court to seal
24 records associated with a dispositive motion, it must base its decision on a
25 compelling reason tied to an articulated factual basis without relying on
26 conjecture. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.
27 2003). The compelling basis standard is more stringent than the Rule 26(c) good
28 cause standard. See *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 679 (9th Cir.

1 2009). Because the parties have failed to demonstrate that even good cause exists
2 to support this motion, they have also failed to provide a compelling basis for
3 sealing any records that may be filed in support of any dispositive motions.

4 The Court encourages the parties to continue cooperating with respect to the
5 handling of potentially sensitive discovery material. The parties may, upon proper
6 showing tied to specific discovery material, move the Court to seal certain
7 discovery filings.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. The parties' Stipulated Motion for Entry of Stipulated Protective Order
10 Regarding Confidential Information, ECF No. 14, is **DENIED**.

11 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
12 file this Order and provide copies to counsel.

13 **DATED** this 4th day of August, 2016.



14
15
16
17 Stanley A. Bastian
18

19 Stanley A. Bastian
20 United States District Judge
21
22
23
24
25
26
27
28